

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3892 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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BALUBHAI DANABHAI AHER

Versus

STATE OF GUJARAT

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Appearance:

MR JT TRIVEDI for Petitioner

MS DARSHNA PANDIT, Ld. AGP for the State

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 18/08/2000

ORAL JUDGEMENT

The petitioner has challenged the order of the Collector dated 10-5-1990, at Annexure "A" to the petition and the order of the Government dated 11-1-1991 at Annexure "B" to the petition, confirming that order, by which the petitioner's application for regularisation of the encroachment in Survey No.162/1, of Village Nana

Asarana, Taluka Mahuva, District Bhavnagar, admeasuring 8 Acres of agricultural land was rejected on the ground that if the encroachment is regularised it will be contrary to the provisions of Section 54 of the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Land Ordinance, 1949.

2. It appears from the record that the petitioner was in possession of the said land since the year 1974. Since the petitioner was an unauthorised cultivator, proceedings were initiated under Section 61 of the Bombay Land Revenue Code, by the Mamlatdar, Mahuva, who made an order against the petitioner. That the order was ultimately challenged before the State Government under Section 211 of the Code and the State Government by its order dated 27-6-83 quashed and set aside the order of the Mamlatdar, which was made on 18-4-83. In the process, it was observed that there was inconsistency between the show cause notice and the order, made by the Mamlatdar. In paragraph 5 of the said order, it was observed that the petitioner was an unauthorised cultivator of the land in question in which he had dug a well. It was also observed that he had grown trees in the said land. Moreover, the land appeared to have vested in the Gram Panchayat as per entries dated 21-3-1973. As the Mamlatdar had not taken into account the entries made in the village forms nos.6 and 7/12, it was held that, if the land had vested in the Panchayat, no action could have been taken under Section 61 of the Bombay Land Revenue Code. It was the Panchayat, that could take action under Gujarat Panchayats Act.

3. It appears that thereafter the petitioner made an application for regularisation of the encroachment which was made by him, which came to be rejected by the Collector by the impugned order dated 10-5-1990, confirmed by the State Government.

4. The only ground on which the said application of the petitioner was rejected, as stated in the impugned order made by the Collector, was that the encroachment could not be regularised, because that would violate the provisions of Section 54 of the said Saurashtra Gharkhed Ordinance. Section 54 of the Ordinance relates to restrictions on transfers of agricultural lands and bars transfers to non-agriculturist, by providing, inter alia, that no sale, (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue) gift, exchange or lease of any land where lease is by law allowed or interest therein, or no mortgage of

any land or interest therein in which the possession of the mortgaged property is delivered to the mortgagee, shall be valid in favour of a person, who is not an agriculturist. It is clear that the provisions of Section 54 of the Ordinance applied to transfer to non-agriculturists.

5. In the present petition, there was no question of such transfer involved, as the petitioner had only made an application for regularising the encroachment of the land which, admittedly, he was cultivating since 1974. Even as per the facts mentioned in the order of the Government dated 27-6-83 at Annexure "C" to the petition, by which the petitioner's revision application was allowed and the order of the Mamlatdar made against the petitioner under Section 61 of the Bombay Land Revenue Code, was quashed and set aside, there was absolutely no ground for holding that the petitioner was not an agriculturist. Even the Collector did not, in his order dated 10-5-1990, hold that the petitioner was not an agriculturist, but simply referred to the Section 54 of the Ordinance without examining its contents. The State Government, while confirming such an order, held that merely because the petitioner was a son of an agriculturist, it could not be said that he was an agriculturist. The State Government also held that the provisions of Section 54 of the Ordinance were applicable and there would be breach of the said provisions if the encroachment was regularised.

6. It appears from the order made on 27-6-83 by the State Government that it had taken note of the fact that the petitioner was cultivating the land but this aspect has been ignored. Otherwise, there would have been no occasion to observe that the petitioner was not an agriculturist. The Collector and the Government have ample powers to grant land, which are provided in Chapter VI of the Bombay Land Revenue Code, 1879. Any person desirous of taking up unoccupied land which has not been alienated must, previously to entering upon occupation obtain the permission in writing of the Mamlatdar or Mahalkari" as provided under Section 60 of the Bombay Land Revenue Code. Section 61 of the Code provides penalties for unauthorised occupation of land and Section 62 provides that unoccupied land may be granted on conditions. It is pointed out by the learned counsel for the petitioner that the Government have issued orders in the resolution no. encroachment 1072 28 28765/Law dated 8-1-1980, regarding the regularisation of the encroachments. Therefore, the petitioner's request for regularising the encroachment made by him in the

application was required to be considered in the light of the powers of the Collector to regularise such encroachments as per the guidelines that may have been provided by the State Government. It appears that the Collector, while making the impugned order dated 10-5-1990, did not consider the petitioner's application from this angle and was unnecessarily swayed away by the provisions of Section 54 of the said Saurashtra Gharkhed Ordinance, which was not applicable to the facts of this case.

7. In this view of the matter, the impugned orders at Annexures "A" and "B" cannot be sustained and are hereby quashed and set aside with a direction to the Collector to reconsider the matter and take decision expeditiously in accordance with law, after hearing the petitioner, and until such decision is taken, to maintain status quo as regards land in question. Rule is made absolute accordingly with no order as to costs.

18-8-2000 (R. K. Abichandani, J.)

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